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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

LADISLAO SALGUERO-CASTRO,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70674

INS No. A72-669-178

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 12, 2003**
San Francisco, California

Before: RYMER, KLEINFELD, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Ladislao Salguero-Castro is a native of Guatemala who entered the United States without inspection in 1991. He petitions for review of an order of the Board of Immigration Appeals (BIA) denying his application for asylum and withholding of deportation. Because deportation proceedings were commenced before April 1, 1997, and the final order was issued after October 30, 1996, we have jurisdiction pursuant to former 8 U.S.C. § 1105a(a), as amended by the transitional rules for judicial review in § 309(c)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *See Kalaw v. INS*, 133 F.3d 1147, 1149-50 (9th Cir. 1997). We deny the petition.

I

Salguero-Castro points to an incident in 1991 when he was shot at by a military airplane in the vicinity of a guerilla camp that he was riding by while running an errand on horseback, threats by soldiers in the Guatemalan military, and the death in 1995 of a friend he had met in Los Angeles who had returned to Guatemala. However, these incidents do not compel a reasonable factfinder to find past persecution. *INS v. Elias-Zacarias*, 502 U.S. 478, 481-84 (1992). Salguero-Castro was never involved in any type of political organization. His family lives in Guatemala unharmed. He testified that his problems began because

guerillas ambushed soldiers on his father's property in 1990. The property was overrun, and soldiers told his father that Salguero-Castro would be arrested as a guerilla if the property were not cleared. Nothing happened to Salguero-Castro. Nor was he injured by the gunfire; a reasonable factfinder could conclude that Salguero-Castro was simply at the wrong place at the wrong time. *See Desir v. Ilchert*, 840 F.2d 723, 727 (9th Cir. 1988) ("Persecution is found 'only when there is a difference between the persecutor's views or status and that of the victim; it is oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate.'" (quoting *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985))). The only explicit threat occurred after that, when a military officer visited his house, accused him of being a guerilla, and told Salguero-Castro's mother that he would be killed if caught. *Cf., e.g., Gui v. INS*, 280 F.3d 1217, 1229 (9th Cir. 2002) (finding past persecution when an applicant was first threatened and then survived, without injury, a staged car crash that could have resulted in severe injury); *Ruano v. Ashcroft*, 301 F.3d 1155, 1160-61 (9th Cir. 2002) (finding past persecution when an applicant was first threatened and then "was hunted down (albeit unsuccessfully) by men with pistols who were out to harm him"). This threat, while menacing, was not combined with confrontation or other mistreatment. *Cf. Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) ("Our court

generally treats unfulfilled threats, without more, as within that category of conduct indicative of a danger of future persecution, rather than as past persecution itself.”). Accordingly, we cannot say that a finding of persecution was compelled.

Likewise, the evidence does not compel the conclusion that Salguero-Castro has a well-founded fear of future persecution on account of his actual or imputed political opinion. There is no question that Salguero-Castro has satisfied the subjective prong of the future persecution test in this case, as he testified credibly. However, the country condition report upon which the BIA relied provides substantial evidence in support of the conclusion that future persecution is not a reasonable possibility. Although Guatemalan country condition reports, standing alone, may have limited value when used to rebut a presumption of future persecution, *Rios v. Ashcroft*, 287 F.3d 895, 901-02 (9th Cir. 2002), these reports may provide substantial evidence in cases in which the burden remains on the applicant. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). The IJ also relied on evidence that Salguero-Castro’s family members have lived in Guatemala without incident, and that Salguero-Castro was never harmed by the Guatemalan military. Both facts constitute substantial evidence in support of the IJ’s conclusion. *Aruta v. INS*, 80 F.3d 1389, 1395 (9th Cir. 1996). Moreover,

Salguero-Castro's claim that his family is not similarly situated is undermined by his father's interaction with the military following the ambush that took place on his father's land. Finally, Salguera-Castro's testimony only indicates that a friend was killed in 1995 and that he believes the government killed his friend because it thought his friend was a guerilla. However, Salguera-Castro has no direct knowledge of his friend's activities in Guatemala, or of what happened to him upon his return. A reasonable factfinder is not compelled to find either that the government was responsible, or that Salguera-Castro has a well-founded fear based on the fate that befell his friend from California.

II

Having failed to satisfy the lower standard of proof to establish eligibility for asylum, Salguero-Castro necessarily cannot show eligibility for withholding of deportation. *Kazlauskas v. INS*, 46 F.3d 902, 907 (9th Cir. 1995).

PETITION DENIED.